

The first two issues raised by the respondent in this appeal are jurisdictional and subject to Appeals Board review. See K.S.A. 44-534a(a)(2).

(1) The Appeals Board will first review the preliminary evidentiary record concerning the issue whether the claimant's right knee injury arose out of and in the course of her employment with the respondent on the date alleged. In a workers compensation case, the claimant has the responsibility to persuade the trier of facts by a preponderance of the credible evidence that she is entitled to the compensation benefits requested. See K.S.A. 44-501(a) and K.S.A. 44-508(g).

In the instant case, the Administrative Law Judge ordered the respondent to provide medical treatment for injuries to claimant's back and right knee as a result of a work-related accident that occurred on August 3, 1994. Respondent had voluntarily provided medical treatment for claimant's back injury and agrees to continue to provide such medical treatment. However, respondent argues that the preliminary hearing evidentiary record does not establish that the claimant's right knee injury occurred during her work-related accident of August 3, 1994. Respondent recognizes that the claimant did receive a right knee injury but contends such injury did not occur while she was working for the respondent.

The claimant was involved in an accident while performing her job duties as a mower operator for the respondent on August 3, 1994. As a result of that accident, she now alleges that she injured her neck, upper back and her right knee. On the day of the accident, she reported her injuries to Sandy Miller, secretary for the respondent, only stating that she injured her neck and back. At the request of the respondent's insurance carrier, claimant also filled out a report of accident in her own handwriting on August 31, 1994, which again only specified injuries to her neck and back. Neither report mentioned the right knee injury. At the regular hearing, claimant testified that she told both Sandy Miller and Marvin Cusick, her supervisor, of her right knee injury immediately following the accident. Both of these employees of the respondent testified that the claimant did not tell them of a right knee injury until sometime during the last week of November of 1994.

Respondent first provided medical treatment for claimant's neck and back injury on August 5, 1994 when claimant was examined by Dana Jewell, a physician's assistant, for Dr. Suthers. The medical record of this visit does not contain information that the claimant, at that time, complained of a right knee injury. The medical record indicates that claimant was complaining only of low neck and upper back injuries. During that visit, claimant requested chiropractic treatment which was approved by the physician's assistant. Claimant received chiropractic treatment from Roy Lane, D.C., from August 8, 1994 through November 9, 1994. This treatment was only related to the claimant's neck and back injury. Dr. Lane's medical records do not contain a reference to claimant's right knee complaints until December 14, 1994 when Dr. Lane wrote a note to claimant's supervisor indicating that claimant had previously complained of pain in her right knee. Dr. Lane, in another letter dated February 27, 1995, indicated that he last examined the claimant on November 19, 1994 and that she was walking three (3) miles per day. He stated in that letter that on December 14, 1994, claimant came into his office asking him if he recalled her complaining about knee pain. She was not examined at that time.

Claimant was finally referred to Pedro A. Murati, M.D., in Wichita, Kansas, for evaluation and treatment. Dr. Murati's first examination of the claimant was on November 28, 1994. During that visit, claimant complained of symptomatology in her right knee. This was the first medical record that indicated claimant had injured her right knee during the August 3, 1994 accident. Dr. Murati ordered an MRI which was completed on

December 2, 1994. The MRI showed a tear of the posterior horn of the medial meniscus of the right knee. Physical therapy was prescribed for both claimant's back and right knee injuries. Respondent provided for the continuing medical treatment in reference to claimant's back, but denied treatment for the right knee.

Claimant admitted photographs of her right knee into the evidentiary record that were allegedly taken on August 4, 1994 and November 27, 1994. The August 4, 1994 photographs showed a badly bruised and swollen right knee. The photograph taken on November 27, 1994 showed that claimant's knee continued to be swollen, but only light bruising remained. Claimant testified that her knee was symptomatic between August 3, 1994, the date of her accident and November 28, 1994 when she first sought treatment for her right knee injury. Claimant asserted that the reason she did not request treatment for her right knee until the latter part of November 1994 was that she was concerned with the terrible pain that she had in her neck and back.

The Appeals Board has made a careful review of the testimony of the claimant and respondent's two (2) witnesses, Sandy Miller and Marvin Cusick, plus the medical records and accident reports admitted into evidence for preliminary hearing purposes. The Appeals Board finds that claimant has failed to provide credible evidence that she sustained a right knee injury on August 3, 1994 that occurred while she was employed by the respondent. Medical records do not indicate that she sought treatment for her right knee problems until November 28, 1994, almost four (4) months following the accident. Both of the employees who testified for the respondent denied that the claimant reported a right knee injury to them until the latter part of November 1994. The Appeals Board also questions whether the photographs of the claimant's right knee could have been taken almost four (4) months apart and still show swelling and bruising. Based on the preliminary hearing evidentiary record, the Appeals Board finds that it is more probably true than not, that claimant's right knee injury did not occur during her work-related accident of August 3, 1994.

Having found the claimant did not sustain her right knee injury while employed by the respondent, the remaining issues are moot and will not be addressed by the Appeals Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Thomas F. Richardson, dated May 5, 1995, is reversed and the claimant is denied benefits against the respondent and its insurance carrier for an alleged right knee injury occurring on August 3, 1994.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert A. Anderson, Ellinwood, Kansas
 James M. McVay, Great Bend, Kansas
 Thomas F. Richardson, Administrative Law Judge
 Philip S. Harness, Director